

June 27, 2023
Sl. No.34
Court No.19
s.biswas

CO 1655 of 2023

Prasenjit Dey
vs.
Dilip Kumar Dey

Mr. Saikat Mondal
Mr. Parashar Baidya
... for the petitioner
Mr. Sukanta Chakraborty
Mr. Z. Ahmed
... for the opposite party

The revisional application is directed against the order dated April 1, 2023 passed by the learned Civil Judge (Junior Division), 3rd Court, Serampore, Hooghly, in Title Suit No.250 of 2020. By the order impugned, the learned court below partially allowed the application for amendment of the written statement. Incorporation of the name of the mother and the number of electric meter were permitted. The rest of the schedule of amendment was disallowed.

An elaboration with regard to purchase of land and the fact that the major portion for the construction on the said land had been made by the petitioner, were not allowed on the ground of delay.

The learned advocate for the petitioner/defendant submits that the order impugned suffers from the following irregularities:

- a) No reasons as to why the amendment should not be allowed had been assigned;

- b) The amendment did not amount to withdrawal of any admission made in the written statement;
- c) The amendment did not take away any right which had accrued in favour of the plaintiff on the strength of the written statement which had been filed;
- d) The nature and character of the suit did not change;
- e) The amendment was only in the nature of elaboration of the contention of the petitioner, which was already a part of written statement;
- f) The Hon'ble Apex Court time and again held that amendment of a written statement should be allowed and more liberal approach should be adopted by courts.

Mr. Chakraborty, learned advocate for the opposite party/plaintiff submits that the amendment was hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure. After the issues had been framed, the petitioner decided to file the amendment application only to delay the suit. The facts which were sought to be incorporated by way of amendment were well within the knowledge of the petitioner. In the application for amendment, the

petitioner has not explained why, in spite of due diligence, the said facts could not be brought on record in the written statement.

Having heard the learned advocates for the respective parties, this court arrives at the following conclusion:-

In paragraph 11 of the written statement, the petitioner mentioned the plaintiff and his wife had misbehaved with Haran Dey, the predecessor-in-interest of the plaintiff, (grandfather of the petitioner) and Haran Dey had ousted the plaintiff and his wife from the property. Thereafter, the plaintiff, his wife and the petitioner, who was the eldest child, started living in another rented accommodation. Subsequently, the land on which the house had been constructed, was purchased with the help of the family members and the construction was done. The petitioner was a good student, but due to financial stringency he was bound to start working and had helped his father financially to build the house.

Towards the end of the said paragraph, the petitioner has also mentioned that the petitioner being the eldest son had started running a shop from the premises in question and had helped his father, i.e., the plaintiff to build his house and to maintain his family.

In the schedule of amendment, the petitioner has elaborated such fact by seeking incorporation of the names of the children of Haran Dey, the predecessor-in-interest of the plaintiff. He further sought to incorporate the fact that out of love and affection for the petitioner, the grand father had given Rs.55,000/- to purchase the land and the petitioner by dint of hard work, procured money to construct the house and help his father financially. His father was only a name lender.

It has also been stated that the documents, the sanction plan and other necessary formalities which were required to be complied with, had been done in the name of the father.

Thus, the apprehension of Mr. Chakraborty, that by incorporating the above mentioned facts by way of amendment, the petitioner was denying the title of his father, is not correct. What the petitioner tried to incorporate was that although the father was the owner by name, he had contributed to the construction of the house.

The Apex Court in the case of Andhra Bank vs. ABN Amro Bank N.V. and others reported in 2007 SC 2511 observed that delay was no ground for refusal of prayer for amendment of a written statement. The only question to be considered by the Court was whether such amendment would be

necessary for decision of the real controversy between the parties in the suit and the Court could not go into the question of merits of amendment. The Hon'ble Apex Court in the case of Ramchandra Sakharan Mahajan vs. Damodar Trimbak Tanksale (Dead) and others reported in (2007) 6 SCC 737, held that if the amendment enables the Court to pinpointedly consider the real dispute between the parties and helps to decide the case more satisfactorily, the amendment ought to be allowed.

In the case of Raghu Thilak D. John vs. S. Rayappan reported in AIR 2011 SC 699, it was held that amendment should generally be allowed, unless it was shown that permitting the amendment would be unjust and would cause prejudice to the opposite side, which could not be compensated by costs or would deprive him of a right which had accrued to him with the lapse of time. Amendment may also be refused if the same is barred by time.

In the decision of Rajesh Kumar Aggarwal and others vs. K.K.Modi and others reported in AIR 2006 SC 1647, the Apex Court held on similar lines and directed that the Court was not to go into the merits. The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the

amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

In the decision of Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr. decided in Civil Appeal No. 5909 of 2022, the Hon'ble Apex Court laid down the principles of governing amendment in paragraph 70 of the decision. The relevant portion is quoted below:-

"(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:-

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided
(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily

required to be liberal especially where the opposite party can be compensated by costs.”

The nature of the suit is for eviction of a licensee. Ownership of the plaintiff has not been denied in the amendment application. The amendment of the application is just to elaborate the facts on the monetary contribution of the grandfather and the petitioner. The nature of the suit has not changed. The apprehension of Mr. Chakraborty that the petitioner was trying to drag the suit is dispelled by directing expeditious disposal of the suit. Hence, it is directed that:-

- a) The amended written statement will be filed within three weeks from date. Such amended written statement will be accepted by the learned court upon being satisfied that cost of Rs.5000/- had been paid to either the plaintiff directly or to the advocate on record of the plaintiff in the learned court below;
- b) The plaintiff may file a rejoinder if he deems fit and proper;
- c) The affidavit-in-chief of the plaintiff may be amended or additionally filed. Thereafter, proceeding shall continue in accordance with law.

It is settled law that the correctness of the amendment application cannot be decided at the time of disposal of the amendment application. The merits of the application are subject to proof at the trial.

The learned court below is directed to dispose of the suit within a period of six months, without giving unnecessary adjournments to either of the parties.

Revisional application is disposed of.

All the parties are directed to act on the basis of the sever copy of the order.

(Shampa Sarkar, J.)